

These are the tentative rulings for civil law and motion matters set for Tuesday, July 8, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 7, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0056431 Humane Society vs. Ventura, Anthony S., et al**

Motion for Order Authorizing Sale of Livestock Prior to Judgment

Plaintiff Humane Society of the Sierra Foothills ("Humane Society's") Motion for Order Authorizing Sale of Livestock Prior to Judgment is granted.

A livestock servicer has a general lien upon livestock in its possession to secure performance of the provision of livestock services. Civ. Code § 3080.01(a). A lienholder may apply to the court for an order authorizing sale of livestock. Civ. Code § 3080.03. In this case, plaintiff establishes a claim giving rise to a lien upon which an order authorizing sale may be issued. Plaintiff also establishes the probable validity of its claim, and that a sale is necessary because the cost of care of the subject horses exceeds the economic value of the horses, and until sale is authorized, plaintiff is unable to place the animals in the care of a private party, and that sale should be authorized in the interest of equity. Finally, plaintiff establishes that the sale is not sought for an improper purpose, and the sale will be conducted in a commercially reasonable manner. The sale shall be conducted as set forth in plaintiff's application.

Motion for Order Establishing Admissions

Defendant Anthony Ventura's motion for order establishing admissions is denied.

Defendant's motion is not supported by any declaration, and therefore there is no admissible evidence supporting the facts asserted therein.

Motion for Order Compelling Responses to Form Interrogatories, Special Interrogatories, and Requests for Production of Documents

Defendant Anthony Ventura's motion for order compelling responses to form interrogatories, set one, special interrogatories, set one, and request for production of documents, set one, is denied.

As noted by defendant, plaintiff served objections to the subject discovery on March 3, 2014. Where a party to whom interrogatories are directed gives responses deemed improper by the propounding party, such as objections, a motion to compel further responses lies. Code Civ. Proc. § 2030.300(a)(3). A motion to compel further responses must be accompanied by a separate statement, which sets forth verbatim each request, the answer or objection, and the reason why further responses should be ordered. Cal. R. Ct., rule 3.1345. Further, a motion to compel further responses must be served within 45 days after the responses were served, unless the parties agree to extend the time. Code Civ. Proc. § 2030.300(c). Defendant's motion was served on June 6, 2014, 95 days after service of the objections. Accordingly, the motion is untimely. *See Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, 685.

**2. M-CV-0061441 U.S. Bank, N.A. vs. Marlar, Kevin**

Appearance required on July 8, 2014 at 8:30 a.m. in Department 40.

**3. S-CV-0030541 Nersesyan, Svetlana vs. Bank of America, N.A.**

The motion for attorneys' fees is dropped. No moving papers were filed.

**4. S-CV-0031959 Spann, William vs. CBM-96, LLC, et al**

Casper's Demurrer to First Amended Cross-Complaint of Edward Mackay

John P. Casper, individually and as trustee of the John P. Casper Trust, the John P. Casper Family Partnership, and CBM Group, Inc.'s ("Casper's") demurrer to the first amended cross-complaint of Edward Mackay ("Mackay") is overruled in part, and sustained in part with leave to amend.

Mackay's first, second, third, fourth, sixth and eighth causes of action are alleged as derivative claims on behalf of CBM-96 LLC ("CBM"). Casper argues that Mackay fails to allege with particularity his efforts to secure from the managers the action he desires, or the reasons for not making that effort. Corp. Code § 17709.02(a)(2). Accepting the allegations of the cross-complaint as true for the purposes of this demurrer, the court finds that the cross-complaint adequately alleges demand futility so as to satisfy the requirements of Corporations Code section 17709.02(a)(2). In particular, Mackay alleges that he served two written notices of special meetings to vote on whether to pursue the instant litigation, that Casper asserted in response to both notices that such notices were "invalid", "without legal or other authority", and would "give rise to individual liability", and that any actions taken at any such meetings would be void. (Mackay First Amended Cross-Complaint, ¶¶ 19-22.) Mackay further alleges that both

notices notified the members of the factual basis of the claims against Casper. (*Id.*) Although Mackay alleges that the three members of CBM besides Casper hold a majority membership interest in CBM, Mackay also alleges that this position is expressly disputed by Casper, who claims that he owns a majority of the membership interests in CBM. (*Id.*, ¶¶ 16, 22.) Such allegations, together with allegations regarding the purported wrongdoing of Casper, adequately allege facts creating a reasonable doubt that the board of directors could have properly exercised independent and disinterested business judgment in responding to Mackay's demand. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 791-792. Based on the foregoing, Casper's demurrer to the first, second, third, fourth, sixth and eighth causes of action on the grounds that demand futility is not adequately alleged is overruled.

Mackay's fifth and seventh causes of action are alleged as individual claims asserted by Mackay. The fifth cause of action seeks a declaration regarding CBM's ownership of certain general partnership interests, and entitlement to distributions from said partnership interests. This claim rightfully belongs to CBM, not to Mackay as an individual. Casper is not judicially estopped from making this argument as the court has not yet made a determination with respect to Casper's individual claims. *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183. Mackay's seventh cause of action for breach of CBM's operating agreement also is a claim belonging to CBM, not to Mackay as an individual. Mackay appears to concede this point in this opposition. Accordingly, the demurrer is sustained as to the fifth and seventh causes of action, with leave to amend.

Finally, Casper demurs to Mackay's second cause of action for breach of fiduciary duty against The CBM Group, Inc., on the grounds that Mackay fails to allege facts establishing a fiduciary duty between The CBM Group, Inc. and CBM. Mackay argues that The CBM Group, Inc. is in an alter ego relationship with Casper, and therefore owes CBM a fiduciary duty because Casper owes CBM a fiduciary duty. Mackay asserts only conclusory allegations regarding an alter ego relationship between CBM and Casper, but more importantly provides no authority for the proposition that an alter ego of Casper would owe a fiduciary duty to CBM simply by virtue of the alter ego status. Accordingly, the demurrer is sustained as to the second cause of action, with leave to amend.

Any amended cross-complaint must be filed and served by no later than July 29, 2014.

#### Casper Demurrer to First Amended Cross-Complaint of Ronald Bettencourt

Casper's demurrer to the first amended cross-complaint of Ronald Bettencourt ("Bettencourt") is overruled in part, and sustained in part with leave to amend.

Bettencourt's first, second, third, and fourth causes of action are alleged as derivative claims on behalf of CBM-96 LLC ("CBM"). Casper argues that Bettencourt fails to allege with particularity his efforts to secure from the managers the action he desires, or the reasons for not making that effort. Corp. Code § 17709.02(a)(2). Accepting the allegations of the cross-complaint as true for the purposes of this demurrer, the court finds that the cross-complaint adequately alleges demand futility so as to satisfy the requirements of Corporations Code section 17709.02(a)(2). In particular, Bettencourt alleges that Mackay served two written notices of

special meetings to vote on whether to pursue the instant litigation, that Casper asserted in response to both notices that such notices were “invalid”, “without legal or other authority”, and would “give rise to individual liability”, and that any actions taken at any such meetings would be void. (Bettencourt First Amended Cross-Complaint, ¶¶ 19-22.) Bettencourt further alleges that both notices notified the members of the factual basis of the claims against Casper. (*Id.*) Although Bettencourt alleges that the three members of CBM besides Casper hold a majority membership interest in CBM, Bettencourt also alleges that this position is expressly disputed by Casper, who claims that he owns a majority of the membership interests in CBM. (*Id.*, ¶¶ 16, 22.) Such allegations, together with allegations regarding the purported wrongdoing of Casper, adequately allege facts creating a reasonable doubt that the board of directors could have properly exercised independent and disinterested business judgment in responding to Mackay’s demand. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 791-792. Based on the foregoing, Casper’s demurrer to the first, second, third, and fourth causes of action on the grounds that demand futility is not adequately alleged is overruled.

Bettencourt’s fifth cause of action is alleged as an individual claims asserted by Bettencourt. The fifth cause of action seeks a declaration regarding CBM’s ownership of certain general partnership interests, and entitlement to distributions from said partnership interests. This claim rightfully belongs to CBM, not to Bettencourt as an individual. Casper is not judicially estopped from making this argument as the court has not yet made a determination with respect to Casper’s individual claims. *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183. Accordingly, the demurrer is sustained as to the fifth cause of action, with leave to amend.

Finally, Casper demurs to Bettencourt’s second cause of action for breach of fiduciary duty against The CBM Group, Inc., on the grounds that Bettencourt fails to allege facts establishing a fiduciary duty between The CBM Group, Inc. and CBM. Bettencourt argues that The CBM Group, Inc. is in an alter ego relationship with Casper, and therefore owes CBM a fiduciary duty because Casper owes CBM a fiduciary duty. Bettencourt asserts only conclusory allegations regarding an alter ego relationship between CBM and Casper, but more importantly provides no authority for the proposition that an alter ego of Casper would owe a fiduciary duty to CBM simply by virtue of the alter ego status. Accordingly, the demurrer is sustained as to the second cause of action, with leave to amend.

Any amended cross-complaint must be filed and served by no later than July 29, 2014.

**5. S-CV-0032487 Dept. of Fair Employment and Housing vs. Morrison, Elaine**

The petition to compromise minor’s claim is dropped. No moving papers were filed.

**6. S-CV-0032545 Kopp, Debra vs. Horizon Charter School**

The demurrer to first amended complaint is continued to July 15, 2014 at 8:30 a.m. in Department 40.

**7. S-CV-0032865 Acocks, Michael, et al vs. Ford Motor Company**

Defendant Ford Motor Company's Motion for Summary Judgment, or in the Alternative, Summary Adjudication

The parties' requests for judicial notice are granted. Defendant Ford Motor Company's ("Ford's") objections to evidence are overruled.

Ford's motion for summary judgment, or in the alternative, summary adjudication, is denied.

Summary judgment may be granted where there is no triable issue as to any material fact, and moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c). Defendants moving for summary judgment bear the burden of persuasion that one or more elements of the causes of action in question cannot be established, or that there is a complete defense thereto. Code Civ. Proc. § 437c(p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

Ford first argues that summary judgment is appropriate on res judicata grounds, based on the assert that plaintiffs were members of a certified settlement class in *In re: Navistar Diesel Engine Products Liability Litigation*, 1:11-cv—02496 (N.D. Ill.), and that final resolution of that class action resolved the same claims that are at issue in this case. In response, plaintiffs assert that they expressly opted out of the settlement class on April 10, 2013, and submit as evidence the opt-out letter, and plaintiffs' counsel's declaration stating that the letter was sent as required to the Ford Settlement Exclusion Center. (Ptlf. RSSUMF 11.) Accordingly, plaintiffs establish a triable issue of material fact, and summary judgment may not be granted.

Ford next argues that summary adjudication is appropriate as to plaintiffs' second cause of action for breach of express warranty because the applicable statute of limitations bars plaintiffs' claim. The court agrees with plaintiffs that the pendency of the class action in *In re: Navistar Diesel Engine Products Liability Litigation* tolled the applicable statute of limitations. See *San Francisco Unified School Dist. v. W.R. Grace & Co.* (1995) 37 Cal.App.4th 1318, 1336-1340 (class member is entitled to have the limitations period tolled for the period the plaintiff was a member in the class of a federal class action, up to the point of opting out).

Based on the foregoing, Ford's motion for summary judgment, or in the alternative, summary adjudication, is denied.

Motion for Leave to File First Amended Amended Answer

Defendant Ford Motor Company's motion for leave to file first amended answer is denied.

As a preliminary matter, there is no proof of service showing that the ex parte application filed June 17, 2014, and the court's order on the ex parte application dated June 17, 2014, were served on plaintiffs. Further, the motion is not accompanied by a copy of the proposed amended pleading as required. Cal. R. Ct., rule 3.1324(a)(1).

**8. S-CV-0034268 Selwyn D.J. Vos vs. Reconstuct Company, N.A.**

The demurrer to complaint is continued to July 31, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

**9. S-CV-0034283 Cotter, Kevin vs. Buchner, Willie, et al**

Plaintiff Kevin Cotter's objection to and motion to strike defendant Willie Buchner's demurrer and special motion to strike is denied. **The demurrer and special motion to strike are continued to July 29, 2014 at 8:30 a.m. in Department 40.** Opposition and reply briefs shall be filed per the requirements of the Code of Civil Procedure in relation to the continued hearing date.

**10. S-CV-0034413 Bowen, Brenda Denise vs. Warren, Jon**

Respondents Jacques Whitfield, Greg Kemble, and Shon Davidsen's motion for attorneys' fees is granted. Moving respondents are awarded attorneys' fees from petitioner Brenda Bowen in the amount of \$5,719.50. Code Civ. Proc. § 527.6(r).

**11. S-CV-0034425 Kosko, Denise vs. Railhead Saloon, et al**

The demurrer to complaint and motion to strike are continued to July 29, 2014 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

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